

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No: 05-248
Table of Allotments,)	RM-11262
FM Broadcast Stations.)	RM-11315
(Midway, Falmouth, Owingsville, Danville,)	
Wilmore, and Perryville, ¹ Kentucky))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: October 17, 2007

Released: October 19, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making and Order to Show Cause* (“*Notice and Order to Show Cause*”)² issued in response to a petition for rule making filed jointly by L.M. Communications of Kentucky, LLC (“LMC”), licensee of Station WBTF(FM), Midway, Kentucky, and Gateway Radio Works, Inc. (“Gateway”), licensee of Station WKCA(FM), Owingsville, Kentucky (jointly, “Petitioners”). The *Notice* proposed to substitute Channel 298C3 for Channel 300A at Midway, Kentucky, and modify Station WBTF’s license accordingly. It also proposed to substitute Channel 295A for 299A at a new site at Owingsville, Kentucky and modify Gateway’s license for Station WKCA accordingly, and to substitute Channel 300A for Channel 299A at Falmouth, Kentucky, and modify Station WIOK (FM)’s license accordingly. To accomplish the latter substitution, we issued the *Order to Show Cause* to Station WIOK(FM)’s licensee, Hammond Broadcasting, Inc., Ltd., to show cause why its license should not be modified to specify operation on Channel 300A.

2. In response to the *Notice and Order to Show Cause*, Hammond filed comments in opposition to its channel substitution on Channel 300A, noting that FAA concerns made use of Channel 300A at its current site infeasible. LMC filed comments and reply comments in response to Hammond’s opposition. In addition, Educational Media Foundation (“EMF”), West Portsmouth Broadcasting, Inc., and RGS Communications, Inc., filed counterproposals.³ LMC filed separate reply comments in opposition to EMF’s counterproposal. Hammond filed comments in support of EMF’s counterproposal. Subsequently, we issued a *Request for Supplemental Information* (“*RSI*”), seeking additional information regarding the FAA issues raised in Hammond’s opposition. LMC and Hammond responded to the *RSI*.⁴

¹ The communities of Danville, Wilmore, and Perryville, Kentucky, have been added to the caption,

² *Midway, Falmouth, and Owingsville, Kentucky*, Notice of Proposed Rule Making, 20 FCC Rcd 13019 (2005).

³ EMF’s counterproposal (RM-11315) was accepted and placed on public notice in Report No. 2762 (February 17, 2006). The West Portsmouth and RGS counterproposals are being dismissed. West Portsmouth Broadcasting, Inc., requested the allotment of Channel 294A at West Portsmouth, Kentucky, as its first local aural transmission service. It withdrew its counterproposal on September 12, 2006, certifying pursuant to 47 C.F.R. §1.420(j), that it did not receive consideration for its withdrawal. RGS’s counterproposal requesting the allotment of Channel 294A at Owingsville was not acceptable for consideration because it failed to include engineering for a fully spaced site at the community.

⁴ Ultimately, the FAA issued a *Determination of No Hazard to Air Navigation* regarding the use of Channel 300A at Falmouth. However, this issue is moot, based on our decision herein.

3. **EMF counterproposal.** EMF proposes to reallocate Channel 296A from Danville to Wilmore, Kentucky, modify the Station WLAI-FM (formerly WHIR-FM) license to specify Wilmore as its community of license, and allocate Channel 298A at Perryville, Kentucky, as the community's first local transmission service. EMF argues that its proposal is preferable to Petitioner's because it would result in a new service to more people and would provide a first local service to the community of Perryville without depriving the community of Danville of local transmission service.⁵ EMF argues that its proposal would result in a preferential arrangement of allotments because it would serve priority three of the FM allotment priorities, whereas Petitioner's proposal would serve priority four.⁶

4. In its opposition to EMF's counterproposal, LMC argues that Perryville does not qualify as a community for allotment purposes. LMC contends that Perryville is a town in decline and that it is a bedroom community of Danville, Kentucky, without sufficient indicia of community status. To support this contention, LMC states that Perryville's mayor is only part time, its police force consists of one officer, and its fire department is all volunteer. It also argues that Perryville lacks sufficient businesses to support the city. In response, EMF states that Perryville is a community for allotment purposes. It is an incorporated city of 763 persons, with its own municipal government consisting of a mayor and city council. It has its own post office and zip code, and maintains its own police and fire departments. It has an elementary school and has an active redevelopment authority that is working to restore the city's historical sections and increase tourism. It also has several churches, civic organizations, and local businesses.

5. **Decision.** We will grant EMF's counterproposal. Perryville is a community for allotment purposes. It is incorporated, listed in the Census and has its own zip code and post office, among the other qualities listed by EMF. These are sufficient indicia of community status to qualify as a community for allotment purposes.⁷ We also find that the EMF counterproposal would result in a preferential arrangement of allotments. It would provide Perryville with its first local transmission service, serving allotment priority three, while allowing Station WLAI(FM) to upgrade its facilities and expand its service area without depriving Danville of local service. By way of contrast, Petitioners' proposal would result in an upgrade for Station WBTF(FM), which would serve lesser allotment priority four.

6. Channel 296A can be allotted at Wilmore, Kentucky at a site 12.1 kilometers (7.5 miles) east of the community.⁸ Channel 298A can be allotted at Perryville at a site 7.5 kilometers (4.7 miles) east of the community.⁹

7. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

8. Accordingly, pursuant to the authority contained in 47 U.S.C. §§ 4(i), 5(c)(1), 303(g), and (r), and 307(b), and 47 C.F.R. §§0.61, 0.204(b) and 0.283, IT IS ORDERED That effective December 3,

⁵ Danville will continue to be served by Stations WHIR(AM) and WDFB-FM.

⁶ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)]. *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88, 91 (1982).

⁷ *Id.* at 101; *see also* Carolina Beach, Havelock, Hertford, Jacksonville, Fair Bluff, Wilmington, Shallotte and Longwood, North Carolina, and Murrells Inlet, Bucksport, Darlington, Loris, St. Stephen, North Myrtle Beach, Surfside Beach, Johnsonville, Scranton, Kure Beach, Georgetown, and Stallville, South Carolina, Memorandum Opinion and Order, 7 FCC Rcd 544, 552 (1992).

⁸ The coordinates for Channel 296A at Wilmore are 37-49-36 NL and 84-31-42 WL.

⁹ The coordinates for Channel 298A at Perryville are 37-37-54 NL and 84-52-07 WL.

2007, the FM Table of Allotments, 47 C.F.R. § 73.202(b) IS AMENDED, with respect to the community listed below, as follows:

Community**Channel****Perryville, Kentucky****298A**

9. IT IS FURTHER ORDERED, That pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), and 0.283, IT IS ORDERED, That effective December 3, 2007, the Media Bureau's Consolidated Data Base System will reflect the following FM Channel the reserved assignment for the listed stations, respectively: Channel 296A at Wilmore, Kentucky, in lieu of Danville, Kentucky, for Station WLAI-FM.

10. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by L.M. Communications of Kentucky, LLC, and Gateway Radio Works, Inc., IS DENIED.

11. IT IS FURTHER ORDERED, That the counterproposals filed by West Portsmouth Broadcasting, Inc., and RGS Communications, Inc., ARE DISMISSED.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Victoria M. McCauley, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau